

The Administrative Law Judge (ALJ) found claimant failed to prove she suffered a permanent functional impairment as a result of a work-related November 11, 1999, neck and closed head injury. The ALJ ordered respondent to pay medical treatment expenses, future medical expenses upon proper application and the statutory unauthorized medical expense. No temporary total disability benefits were paid or claimed.

On appeal, claimant contends she proved through her testimony and the medical opinions of Daniel D. Zimmerman, M.D., that she sustained a 10 percent whole body permanent functional impairment from the closed head injury she suffered at work on November 11, 1999. She requests the Board to enter a 10 percent permanent partial general disability award.

Conversely, respondent requests the Board to affirm the Award that denied claimant's request for permanent partial general disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and the parties' oral arguments, the Board makes the following findings and conclusions:

Except for the parties stipulation, before the Board, that claimant's average weekly wage was \$405.80 instead of the \$378.50 found by the ALJ, the Board finds the ALJ's Award should be affirmed. The Board agrees that claimant failed to prove she sustained a permanent functional impairment as the result of his work-related closed head injury.

The Board concludes the opinions of Robert R. Brown, D.O., claimant's treating physician, and board certified neurologist Donald K. Hopewell, M.D., are more persuasive and should be given more weight than the opinion of internal medicine physician Daniel D. Zimmerman, M.D. Both Dr. Brown and Dr. Hopewell found claimant sustained a mild closed head injury as a result of a 20 to 25 pound easel falling on claimant's head at work on November 11, 1999. But, after claimant received conservative treatment with medication, claimant suffered no permanent functional impairment as a result of that injury.

Dr. Zimmerman, on the other hand, diagnosed claimant with chronic cervical paraspinous myofascitis superimposed on osteoarthritic changes affecting the cervical spine with greater occipital nerve entrapment syndrome on the right and left sides. Dr. Zimmerman assigned claimant a 10 percent whole body permanent functional impairment in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. But Dr. Zimmerman's functional impairment rating was not based on a closed head injury. Moreover, in the history taken by Dr. Zimmerman, claimant failed to disclose to the doctor that she settled a claim for a work-related 1997 right shoulder and neck injury while employed by Sunshine Biscuits. The settlement took place on February 24, 2000, for a 15 percent whole body permanent functional impairment. After that history was related to Dr. Zimmerman, he was then asked if he could state within a reasonable degree of medical certainty that all the 10 percent impairment rating he had assessed claimant was related to claimant's November 11, 1999, neck and occipital nerve entrapment. Dr. Zimmerman answered, "No."

The Board further agrees with the findings of fact and conclusions of law that are set out in the Award. It is not necessary to repeat those findings and conclusions. Therefore,

the Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Robert H. Foerschler's October 16, 2001, Award should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael Downing, Attorney for Claimant
Steven G. Piland, , Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Phil S. Harness, Workers Compensation Director